

The Supreme Court of Texas
Professional Ethics Committee
For the State Bar of Texas
Opinion Number 573
July 2006

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, what requirements must be met in order for a Texas lawyer to participate in a privately sponsored internet service that obtains information over the internet from potential clients about their legal problems and forwards the information to lawyers who have paid to participate in the internet service?

STATEMENT OF FACTS

A Texas lawyer is considering participation in an internet client-lawyer service (the "Service") that allows lawyers to participate in the Service for the payment of a fee. The Service is a for-profit business that provides an internet web site offering potential clients with legal problems the opportunity to receive communications from participating lawyers concerning legal services available with respect to legal problems identified by potential clients.

Lawyers can participate in the Service upon payment of a fixed fee. Lawyers pay a fee based on the geographic areas and legal practice areas for which they wish to be included in the Service. Lawyers can be included only for geographic areas in which they are licensed to practice law. The Service is not involved in the retention of a participating lawyer by a potential client, and it does not receive any compensation from potential clients or lawyers based on retention, legal fees paid, or results obtained by a lawyer.

When potential clients wish to seek a lawyer using the Service, they go to the Service web site and input their geographic location, the general area of law of their legal problem, and possibly other information relevant to their selection of a lawyer. Within the preset general areas of law, potential clients may then choose more specific legal practice areas and provide further detail by choosing among menus of alternatives or entering certain limited information such as relevant dates. Potential clients may also be given the opportunity to enter a short narrative describing their problem.

Lawyers for a particular potential client are identified based on geographic location, either statewide or on a more limited basis such as city or county, and on the legal practice area involved as specified by the potential client using the menus provided on the Service web site. The Service provides information from the potential client to the lawyers identified and each such lawyer is then free to decide whether to communicate advertising information to the potential client. Every lawyer participating in the Service for a geographic and legal practice area combination that corresponds to the selections made by a potential client will receive a communication from the Service regarding the potential client and will have the opportunity to communicate with the potential client.

The Service does not purport to select, rate, or recommend lawyers, including lawyers that correspond to a potential client's information, but the Service may limit the number of lawyers who are permitted to participate for certain geographic areas or with respect to certain legal practice areas.

DISCUSSION

In Professional Ethics Committee Opinion 561 (August 2005), the Committee concluded that the Texas Disciplinary Rules of Professional Conduct prohibit a lawyer from paying a fee to be listed on a for-profit internet site that obtains information over the internet from potential clients and forwards the information to one or more lawyers who have paid to participate with respect to the internet site. Opinion 561 deals with client-lawyer internet connection services in general and does not address whether adherence to limitations not considered in that Opinion could make such a service permissible under the Texas Disciplinary Rules. The internet service described in Opinion 561 was not restricted from using discretion in selecting, from among all qualified lawyers participating in the service, the specific lawyers who would receive information concerning a particular potential client. Without more, the absence of a limit on the exercise of such discretion in the service's selection of lawyers rendered the service considered in Opinion 561 an impermissible referral service rather than a permitted advertising or public relations service.

This Opinion addresses the question of whether compliance with additional requirements or restrictions in connection with such a service could make participation in the service permissible for Texas lawyers.

The Texas Disciplinary Rules of Professional Conduct include provisions dealing with advertisements in the public media and participation in lawyer referral services. Rules 7.03(b) and 7.04 prohibit the payment of a fee by a lawyer to a non-lawyer for soliciting or referring prospective clients to the lawyer, unless the referral is from a lawyer referral service that meets the requirements of chapter 952 of subtitle B of title 5 of the Texas Occupations Code, which is known as the Texas Lawyer Referral Service Quality Assurance Act. The Service is not a lawyer referral service meeting the requirements of this statute because it is a privately owned, for-profit organization.

Rules 7.03(b) and 7.04 also permit a lawyer to pay reasonable fees for advertising and public relations services rendered in accordance with the Rules, including paying reasonable fees for advertising in electronic (or internet) telephone directories and legal directories. Thus, the question is what additional elements must be included in a lawyer-client internet connection service to make the service a permissible advertising or public relations service rather than a prohibited referral service. As a basis for answering this question it is helpful to consider the defining characteristics of referral services and internet directories.

Referral services such as those run by bar associations have historically been operated by telephone. A person with a legal problem looking for a lawyer can call the referral service and describe the problem to a referral service staff person who answers the phone. This staff person will determine the legal practice area into which the problem falls and then give the caller the name and contact information of one or more lawyers who are listed with the referral service as seeking clients in the particular legal practice area. Most often, the lawyer or lawyers chosen are simply the next in line on a list of

eligible lawyers. However, the staff person making the selection can exercise discretion in terms of deciding which lawyer from among those eligible will be recommended to the caller. In addition, the staff person would often make a determination as to the legal practice area relevant to the potential client's problem. Because the communications with a referral service normally result in the referral of only one or two lawyers and because referral services are non-profit organizations typically associated with a bar association, potential clients will frequently believe that an element of recommendation accompanies the referral.

Internet legal directories typically allow lawyers to be listed in the directory for a fee. Lawyers provide information about themselves that is provided to a person who finds the lawyer through the directory. Directories can be searched by using the name of a lawyer. A closer parallel to the internet service here under consideration is a search within an internet legal directory conducted by geographic location and legal practice area. Typically, a lawyer listed in an internet directory provides the locations where he practices and selects, from a pre-defined list, those legal practice areas in which he wants to be identified. A person using the internet legal directory searches for a lawyer by specifying a geographic location and selecting a legal practice area from a specified list. The results of the search are automatically determined by a computer based on geographic location and legal practice area as input by the person using the directory. Internet legal directories generally accept an unlimited number of lawyers provided that they are properly licensed to practice law. Other criteria can be applied by a directory as a qualification for listing, for example holding board certification. In addition, some directories make and communicate ratings for lawyers in the directory. In an internet directory, the search results will include all lawyers corresponding to the selected criteria without limitation or elimination. However, the search results may be ordered or prioritized based on various criteria, including in some cases the relative amounts of fees paid to the directory by the participating lawyers. Because internet directories are seen by their users as electronic versions of telephone directories, users can be assumed to understand that a directory is not recommending the lawyers listed in the directory.

Under the standards outlined above, the Committee believes that an internet service such as the Service would be an advertising or public relations service permissible for Texas lawyers under the Texas Disciplinary Rules of Professional Conduct rather than a prohibited referral service, provided that the following requirements are met:

1. The selection of lawyers for a potential client identified in response to the potential client's information is a wholly automated process performed by computers, without exercise of any discretion, based on the information provided by the potential client and the information provided by participating lawyers.

2. The Service takes sufficient steps to ensure that a reasonable potential client understands (a) that only lawyers who have paid a fee to be included in the Service will be given the opportunity to respond to the potential client and (b) that the Service makes no assertions about the quality of the lawyers included in the Service. The Service must not state that it is making referrals of lawyers or describe itself in such a way that would cause a reasonable potential client to believe the Service is selecting, referring and recommending the participating lawyers. The Service must ensure that a reasonable potential client either understands that the Service is open to all licensed lawyers or, if

there are limits on the number or qualifications of lawyers who may participate in the Service, understands the nature of those limits.

3. The fee charged by the Service is a reasonable fee for the advertising and public relations services provided. See Rule 7.03(b).

4. The Service does not unreasonably limit or restrict, either directly or by means of a high fee structure, finely drawn geographic areas and legal practice areas, or otherwise, the number of lawyers it allows to participate for a given geographic area or legal practice area to such an extent that the Service in effect is referring particular types of potential clients to particular lawyers.

5. Every initial communication sent by the lawyer to a potential client that is identified through the Service is advertising information sent by electronic means and clearly states that the communication to the potential client consists of advertising information, that the communication is being sent after identification of the client through the Service based on geographic area and legal practice area, and that the lawyer has paid a fee to participate in the Service.

6. A lawyer does not communicate in person, by telephone, or by other electronic means involving live, interactive communication with a potential client identified through the Service unless and until the prospective client has requested such communication. See Rule 7.03(a).

In order to comply with the Texas Disciplinary Rules of Professional Conduct, a Texas lawyer wishing to participate in the Service must take reasonable steps to determine whether the Service meets requirements 1 through 4 specified above. In addition, a Texas lawyer who has investigated and determined that the requirements outlined above are met in the operation of the Service will have a continuing responsibility to monitor the operations of the Service to ensure that it continues to meet these requirements. Finally, a lawyer wishing to use the Service must ensure that communications on the lawyer's behalf of advertising information to potential clients identified through the Service comply with requirements 5 and 6 above as well as more generally with the requirements of Rules 7.01 through 7.07 concerning provision of information with respect to legal services.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may pay a fee to participate in an internet client-lawyer connection service of the type described in this opinion provided that the requirements specified in this opinion are met.